

## LABOUR DEPARTMENT

The 16th March, 1983

No. 9(1)82-6Lab./1929.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. New Allembery Works, 14/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 211 of 1982

*Between*

SHRI DHARAM PAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.  
NEW ALLEMBERY WORKS, 14/7, MATHURA ROAD, FARIDABAD

*Present.—*

Shri M. K. Bhandari, for the workman.

Shri K. P. Aggarwal, for the respondent.

## AWARD

This reference No. 211 of 1982 has been referred to this court by the Hon'ble Governor of Haryana, *vide* his order No. ID FD-91/82/35605, dated 30th July, 1982 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Dharam Pal, workman and the respondent management of M/s. New Allembery Works, 14/7, Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Dharam Pal was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to demand notice is that he joined the service on 24th May, 1977 as Turner and was getting a salary of Rs. 353/- per month. The respondent gave one Charge sheet dated 9th December, 1981 which was replied on 10th December, 1981. The charge sheet was false and to victimise the workman. The workman was also suspended and an order for domestic enquiry was made. The enquiry officer was appointed and the enquiry officer enquired the matter which was only a show. The enquiry officer was an employee of the respondent and worked according to the wishes of the respondent. The workman participated in the enquiry and gave his defence. The findings of the enquiry officer was not according to the statement in the enquiry. The respondent issued a show cause notice which was also replied and after all the respondent dismissed the claimant from service illegally. So he is entitled for his reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the claimant was employed as turner from 24th May, 1977. He committed some act of grave mis-conduct so he was given the chargesheet and also suspended from service on 11th December, 1981 and domestic enquiry was conducted in to the charges in the presence of Shri Dharam Pal, claimant and full opportunity was given to him to cross-examine the respondent witness and to produce the defence witnesses. Since the charges stood proved in the domestic enquiry and show cause notice was also served upon the workman. The workman submitted his explanation on 3rd April, 1982, but the same was not found satisfactory so the respondent decided to terminate the services of the workman from 4th April, 1982. The domestic enquiry was conducted according to principles of natural justice and the workman was terminated lawfully according to the provisions of certified standing order of the company. The claimant is gainfully employed after his termination of service from the factory. So the reference may be answered in their favour.

On the pleadings of the parties, following issues were framed :—

1. Whether the enquiry conducted by the respondent management was fair and proper ? If so, to what effect ?
2. Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the Issue No. 1 which is a preliminary issue is as under

Issue No. 1.

The representative of the respondent argued on this issue that as stated by the Enquiry Officer Shri V. V. Gupta, Personal Manager as M. W. 1. He was appointed as enquiry officer, vide order Ex. M-1, and he made the enquiry of the chargesheet of the workman which is Ex. M-2. He conducted the enquiry. The copy of the enquiry proceedings is Ex. M-3 from page 1 to 34. The workman participated in the enquiry from beginning to end and he was also represented by his co-workman according to workman's desire. He was given the full opportunity to cross-examine the witnesses of the respondent. The workman and representative have signed the enquiry proceedings through out. The representative of the workman cross examined the respondent witnesses at length and he produced his own witness in defence. After recording the enquiry proceedings he prepared the enquiry findings of the enquiry which is Ex. M-4 which is according to the evidence and documents filed by the parties, in which the workman was found guilty and the same was submitted to the respondent. The workman was also given the copy of standing order which is Ex. M-5. The workman had no objection during the course of enquiry about the enquiry proceedings recorded before him. He further argued that General Manager of the respondent factory Shri M. G. Aggarwal have also come in the witness box who has stated that Shri V. V. Gupta was appointed as Enquiry Officer by the Chief Executive Officer. The company received the enquiry report on which a show cause notice was given to the workman which is Ex. M-7, and the workman replied the same which is Ex. M-8. After considering the charge-sheet, the enquiry findings and reply of the workman, the respondent management decided to dismiss the workman as there was a serious charge of mis-conduct against him so he was dismissed from service, vide letter Ex. M-9. The respondent's representative further argued that the workman has admitted in his statement that he received all facilities what he demanded during the course of enquiry. The enquiry officer gave the copies of Standing order and list of witnesses. The workman has also admitted in his cross-examination that his representative was with him throughout in enquiry proceedings and he cross-examined the respondent witnesses and they both signed the enquiry proceeding at the end of enquiry proceedings of the day and also received the copies of the enquiry proceedings. He further admits that they received the copies of the complaint in the enquiry and also received the Show-Cause-Notice and the termination letter. He further argued that the workman has alleged in his demand notice that he was victimised due to union activities. But he has stated in his cross examination that he not an office bearer of any union. When he was not an office bearer of any union and not produced any such witness or record to prove the victimisation can not be said that the workman was victimised due to union activities. The workman has admitted all the facts in his statement as WW about the enquiry and there is no allegation about the enquiry or about the enquiry officer. The respondent witness MW-2 Shri M. G. Aggarwal has stated in his cross examination that he received the letter Ex. M-5 to M-8 which were for the change of the enquiry officer. There was no reason to change the enquiry officer and there was no such allegation on which the enquiry officer be changed. Simply objecting the enquiry officer is no ground to change the enquiry officer. The respondent decided not to change the enquiry officer. The enquiry officer also stated in his cross examination that he received letters of the workmen from W-1 to W-4 which were settled during the course of enquiry. But the workman has stated in his cross examination that he cannot say what is written in the letter Ex. W-1 to W-3. When he cannot explain what is written in the letters then what objection he raised by these letters cannot be proved. So the enquiry was fair and proper and there was no allegation on the enquiry officer and enquiry proceedings.

The representative of the workman argued on this issue that the chargesheet Ex. M-2 dated 10th December 1981 given to the workman was false because the charge shows that he refused to operate the machine on 9th December 1981 in General Shift, when the machine was in maintenance. The fact is corroborated by MW 3 and the production report dated 9th December, 1981 which were produced by the respondent in the course of enquiry. The machine was in the maintenance. The production report also shows that the actual production of the workman was a bit less. When the machine was in maintenance as stated by the workman and witnesses in the enquiry, then the allegation to operate the machine was false and cannot be believed. The respondent version that the Shift Supervisor Shri Ram Parkash Yadav and the Shift Superintendent Shri J. P. Maheshwari had come to him for demonstration, but the machine was not in working order which was in the notice of the respondent. The workman had denied that Shri J. P. Maheshwari ever summoned him and he disobeyed the orders of the Supervisors. The charges are false fabricated and concocted in the chargesheet there is no name of the shift incharge mentioned so chargesheet was vague. All the witnesses of the respondent have stated that Shri M. D. Gupta was the Shift Incharge which show that the workman disobeyed the order of Shri M. D. Gupta. The respondent produced the witnesses on different dates thereby spoil the sanctity of the enquiry and may be vitiated. There are contradiction in the respondent witnesses, which was pointed by the Enquiry officer. The workman was falsely chargesheeted on account of trade union activities which is clear from the statement of the workman.

After hearing the arguments of both the parties and going through the file, I am of the view that the arguments forwarded by the respondent is very clear and they have proved their case about

the enquiry. The representative of the workman could not raise any such point about the enquiry that could be vitiated. The workman in his statement has admitted all the facts suggested by the respondent in the cross examination which clears that a fair and proper enquiry was conducted by the enquiry officer. So the issue is decided in favour of the respondent and against the workman.

*Issue No. 2 :—*

After deciding issue No. 1 in favour of the respondent the issue No. 2 is for the termination. The respondent has terminated the services of the workman after a fair and proper enquiry against the charges of the workman. The charges according to their certified standing order, are of grave and serious nature. The workman disobeyed the orders of his supervisors inspite of repeated requests. The workman has stated that he was victimised due to union activities which he could not prove. He has stated in his cross examination that he was not an office bearer of any union and there was no registered union in the factory. The respondent has rightly terminated the services of the workman in accordance with their standing order which is Ex. M-5. So the workman is not entitled to any relief.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.

Dated the 24th February, 1983.

Endst. No. 381 Dated The 28th February, 1983

Forwarded(four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.

The 24th March, 1983

No. 9(1)82-6Lab/2259.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Church of North India, Mission Compound, Ambala City.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD**

**Reference No. 50 of 1982**

*between*

**SHRI AMAR NATH, WORKMAN AND THE RESPONDENT MANAGEMENT OF  
M/S CHURCH OF NORTH INDIA, MISSION COMPOUND, AMBALA CITY.**

*Present.—*

Shri U. Kant, for the workman.

Shri Madhu Sudan, for the management.

#### **AWARD**

This reference No. 50 of 1982 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/AMB/175/81/10599, dated 12th March, 1982, for adjudication of the dispute existing between Shri Amar Nath, workman and the respondent management of M/s Church of North India, Mission Compound, Ambala City. The term of the reference was :—

Whether the termination of service of Shri Amar Nath was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 6th July, 1982. On 15th February, 1983 the representative of the workman made a statement in this court that the workman had settled his case with the respondent mutually. So he does not want to pursue his case and withdraws the same. This statement was duly admitted by the representative of the management.

In the light of the above statement of the parties, I hold that there is no dispute between the parties as the case settled. I give my award accordingly. No orders as to costs.

Dated the 1st March, 1983.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.

Endorsement No. 460, dated the 10th March, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within weeks time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.

No. 9(1)82-6 Lab/2492.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Cement Research Institute of India, Ballabgarh.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD**

**Ref. No. 21/1979**

*between*

**SHRI R. S. KHERKA, WORKMAN AND THE MANAGEMENT OF M/S CEMENT  
RESEARCH INSTITUTE OF (INDIA) BALLABGARH**

### **AWARD**

The Governor of Haryana referred the following dispute between the workman Shri R.S. Kherka and the management of M/s Cement, Research Institute of India Ballabgarh, by order No. 109/78/1143, dated 8th January, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Ram Singh, Kherka was justified and in order if not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by order dated 21st July, 1979:—

- (1) Whether the management is an industry within the meaning of the I. D. Act.
- (2) Whether the dispute is barred by *resjudicata*?
- (3) Whether the reference by the State Government to this Tribunal is not valid?

- (4) Whether this Tribunal has no jurisdiction to proceed with the dispute?
- (5) Whether the workman was employed temporarily on contract basis? If so, to what effect?
- (6) Whether the termination of services of the workman was justified and in order?
- (7) Relief.

*Iusse No 1* was further amended,—*vide* order dated 4th February 1980 and it was ordered that issue No 1 to 4 will be treated as preliminary.

The workman examined himself as his own witness and the management examined Shri K.C. Sachdev, Administrative Officer as MW-1.

The workman deposed that he performed his duty at Ballabgarh. Institute was a society registered under Society Registration Act. It was research institute. Management took project for research and the management derived income from such projects. Annual report of the management was Ex. W-1. In cross examination, he denied the suggestion that the institute was under the Minister of Industry.

MW-1 deposed that registered office was in Delhi. The Society was registered in Bombay. It was attached to Government of India and ultimate control was of the Government of India. One Centre of the management was in Tamil Nadu. Labour disputes were dealt by Government of India there. Institute was engaged in research of cement. The funds were sanctioned by the Ministry, out of cess levied on cement industries. The fees charged for project went to consolidated funds. Copy of memorandum of association was Ex. M-2. It was attached to Ministry of Industries Central Government by Ex. M-3. Copy of registration was Ex. M-3.

The main point of the learned representative for the management was that appropriate Government under section 2 (a) of the Industrial Disputes Act, 1947 was the Central Government as the management was covered under Cement Industries. He referred to annual report of 1978 at page 56 of which was shown commercial run of mini cement plant. He placed on record copy of gazetted notification of Part II Section- 3 sub-section (ii) dated 8th November, 1977 which shows that by notification under sub-clause (i) of clause (a) of Section 2, the Central Government hereby specified for the purposes of that sub-clause, the controlled industry engaged in the manufacture or production of Cement which had been declared as a controlled industry under Section 2 of the Industries (Development and Regulation) Act, 1951.

I have applied my mind to Section 2 (a) (i) the Industrial Disputes Act, which state:—

“appropriate Government means in relation to any Industrial Dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning controlled industry as may be specified in this behalf by the Central Government, etc. etc.”

The present reference was made by order dated 8th January, 1979 and the Central Government was appropriate Government for Cement Industries at that time. Therefore, I find that this Tribunal has no jurisdiction to deal with the present case. The workman may seek his remedy by moving the appropriate Government i. e. Central Government. Therefore I pass my award that the reference was bad on the above ground.

Dated the 8th March, 1983.

M. C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal, Haryana,

Faridabad.

Endorsment No. 292, dated 11th March, 1983.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.